



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-197119

JANUARY 4, 1980

The Honorable Marvin S. Cohen
Chairman, Civil Aeronautics Board

AGC 00109



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Dear Mr. Chairman:

Subject: ~~The~~ Civil Aeronautics Board Should Expand Its Sunset Planning (CED-80-46)

We have studied the Airline Deregulation Act of 1978 (Public Law 95-504) which provides for gradually phasing out the Civil Aeronautics Board and transferring some of its functions to other agencies. The act is silent, however, on many important functions which may still be needed after 1985 when the Board ceases to exist. We are concerned with the need to identify and transfer these residual functions. Although we recognize the Board has initiated some sunset planning, we believe more needs to be done.

STATUTORY RESPONSIBILITIES

The Civil Aeronautics Board is responsible for administering and enforcing provisions in numerous statutes. The Airline Deregulation Act already provides that as the act's sunset provisions become effective, some of the Board's responsibilities will be transferred to other agencies. On December 31, 1981, most of the Board's domestic route authority expires. On January 1, 1983, its authority over domestic fares expires. Also on that date, its authority over domestic mergers and interlocking relationships will be transferred to the Department of Justice. *AGC 00037*

On January 1, 1985, the Board will cease to exist unless the Congress takes action to the contrary. At that time its authority to provide subsidies for air service to small communities will be transferred to the Department of Transportation. *AGC 00037* Authority over foreign air transportation will also go to the Department of Transportation, which must exercise it in consultation with the State Department. Authority over airline agreements, foreign mergers, and foreign interlocking relationships will go to the Department of Justice. Determinations of domestic mail rates will be made by the U.S. Postal Service.

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Besides the major aviation statutes constituting the bulk of its regulatory responsibilities, the Board also administers provisions in numerous nonaviation statutes, such as the

--Consumer Credit Protection Act (Public Law 90-321),
and

--Federal Election Campaign Act of 1971
(Public Law 92-225).

Obviously, to maintain the continuity of statutory objectives set by the Congress, legislation is needed to transfer these functions to other agencies. In some cases, however, merely substituting another agency for the Board in the statute will not suffice because of legislative prohibitions in some agency statutes. For example, the Federal Trade Commission--a prime candidate for most of the Board's consumer protection responsibilities--is prohibited by law from controlling airlines. Therefore, to transfer the Board's responsibility under the Consumer Credit Protection Act, both that act and the Federal Trade Commission Act must be amended.

Because enacting legislation takes time, it is important that the Board review as soon as possible all statutes it administers to determine what legislative changes are required. Since most of the provisions relate to non-aviation matters, legislation could be enacted transferring these functions immediately or providing for joint authority until 1985.

Dual agency responsibility for these matters until 1985 need not be a problem. The Board and other agencies currently exercise dual authority on some matters. For example, the Board shares responsibility for controlling foreign air transportation with the Departments of Transportation and State. Dual authority could provide for an easier transition by giving the gaining agency (1) more time to gear up for the transfer and (2) an opportunity to learn from the Board how to administer the provisions being transferred.

CAB REGULATIONS

The Board's regulations serve as the cornerstone for implementing its legislative mandates. Because these regulations interpret legislation and form the framework for industry compliance, it is important that they be legislatively transferred along with the basic statutory

responsibilities. This action could reduce industry confusion about Federal policies and avoid any lapse in industry's obligation to comply. Examples of these types of regulations are

- establishing the terms, conditions, and limitations of foreign airline permits;
- controlling extensions of credit by airlines to political candidates pursuant to the Federal Election Campaign Act; and
- implementing the Consumer Credit Protection Act as it pertains to airline credit cards.

Without the legislative transfer of these regulations, the gaining agency would probably have to reissue implementing regulations under the Administrative Procedures Act. Although there are exceptions, this procedure requires a minimum of 30 days' notice before new regulations become effective. In practice, implementation usually takes much longer. Since the Board's issuance of regulations is subject to the act, duplicating this process could result in unnecessary delays and lapses in Federal enforcement authority.

TARIFF PROVISIONS

The Board currently requires airlines to file tariffs. These include both rate tariffs and rules tariffs. The latter contain the rules, regulations, and practices under which the airline will provide transportation at the rates and fares specified in the former. Some of the rules tariffs include Board-directed consumer protections. However, on January 1, 1983, the Board will lose its authority to require airlines to file tariffs; thus, some consumer protections will expire.

For example, the Board requires interstate airlines to file tariffs concerning oversales. When an airline oversells a particular flight, the Board requires it to establish, in a tariff filing, its method of selecting passengers to be denied boarding and the amount of compensation these "bumped" passengers will receive. Unless the Board incorporates this tariff into a regulation which can remain in effect until 1985, this consumer protection will expire January 1, 1983.

To forestall the expiration of consumer protections deemed important, the Board needs to review existing tariff provisions to identify those which should be continued beyond January 1, 1983, and incorporate them in Board regulations. Also, the Board should consider including these regulations in its proposal for transferring responsibilities to other agencies.

THE CIVIL AERONAUTICS BOARD'S
SUNSET REVIEW

Recognizing the need for sunset planning, on October 29, 1979, the Board established six task forces to deal with this matter. The goal of these task forces is to transfer Board personnel to agencies receiving certain Board functions and abolish all other functions under the sunset provisions of the Airline Deregulation Act by 1985.

Five of the task forces will cover the transfer of the following functions:

- Foreign air transportation to the Department of Transportation.
- Subsidies for air service to small communities to the Department of Transportation.
- Authorities pertaining to agreements, interlocking relationships, mergers, and antitrust actions to the Department of Justice.
- User/information services to other agencies.
- Consumer protection, possibly to the Federal Trade Commission.

The objectives of these task forces are to (1) describe and identify specific functions to be transferred, (2) determine how many staff-years, current and anticipated, are needed to perform each function, (3) identify the number and types of positions for transfer and whether they are vacant or filled, (4) obtain agreements from the gaining agencies on numbers and types of positions, and (5) establish implementation schedules.

The sixth task force is concerned with abolishing rates and routes authorities. Its objectives are to (1) describe and identify functions to be eliminated, (2) identify the

number and types of positions involved and whether they are vacant or filled, and (3) establish an implementation schedule.

Although these task forces are an important first step in fulfilling the sunset objectives of the Airline Deregulation Act, we believe more needs to be done. Currently the task forces are concentrating on transferring personnel, primarily in those functional areas already scheduled for transfer. However, the transfer of other functional areas to other agencies has not yet been determined.

Of the remaining Board functions not already scheduled for transfer, most concern consumer protections. The consumer protection task force leader told us that his task force is also concentrating on identifying Board personnel currently working on consumer protection matters. It is not addressing which functions and statutes need to be transferred or which agencies should receive these functions. We believe efforts should be made to identify those responsibilities which are not addressed in the Airline Deregulation Act.

CONCLUSIONS AND RECOMMENDATIONS

As the Airline Deregulation Act's sunset provisions become effective, some important Board functions will cease and some consumer protections will be lost unless provisions are made for transferring these functions to other agencies. This task will require additional legislation. Because enacting legislation takes time, the Board should formulate its legislative proposals for transferring these functions as soon as possible.

Although the Board has already begun some sunset planning, its efforts need to be expanded. Specifically, we recommend that the Board:

- Review all statutes it administers to determine those not addressed in the Airline Deregulation Act. Submit to the Congress, as soon as possible, its legislative proposal for transferring these statutory responsibilities along with the implementing regulations.
- Review existing tariff provisions to identify those which should be continued beyond January 1, 1983, and incorporate them in Board regulations. Also,

the Board should consider including these regulations in its proposal for transferring responsibilities to other agencies.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the four committees mentioned above to set in motion the requirements of section 236. Copies are also being sent to the House and Senate legislative committees concerned with air transportation; the Director, Office of Management and Budget; interested Members of Congress; and other parties.

We appreciate the cooperation and courtesy of the Board's staff during our review.

Sincerely yours,



for Henry Eschwege
Director

Birkle, Baltas E.
Deputy Director
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